

**REMARKS**

The present application has been reviewed in light of the Office Action mailed April 16, 2008. Claims 1, 3, 9, 16, 17 and 20 are currently pending. By the present amendment, applicants have amended Claims 1 and 20. Reconsideration of the present application is respectfully requested.

**Claim Rejections- 35 U.S.C. § 112**

Claims 1 and 20 have been rejected under 35 U.S.C. § 112, ¶ 1, for failing to comply with the written description requirement. The Examiner stated that Applicant's disclosure does not state that the cover is made of metal. Accordingly, Claims 1 and 20 have been amended to recite "a solid shell-like ~~metal~~ cover portion." The elimination of the term "metal" brings Claims 1 and 20 in compliance with 35 U.S.C. § 112, ¶ 1. It is therefore respectfully requested that the rejection has been overcome and should be withdrawn.

**Claim Rejections – 35 U.S.C. 103**

Claims 1, 3, 9, 16, and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 6,267,772 to Mulhauser et al. (hereinafter referred to as "Mulhauser") in view of U.S. Pat. No. 4,776,328 to Frey et al. (hereinafter referred to as "Frey") and in further view of U.S. Pat. No. 6,533,454 to Kaikkonen et al. (hereinafter referred to as "Kaikkonen").

Claim 1 recites, an encapsulation device for the repair of an articular cartilage defect comprising *inter alia*, a body having a generally annular frame supporting therein a solid shell-like cover portion for disposition adjacent a bone in an area of the cartilage. . . an elongated leg

Appl. No. 10/812,609  
Amendment dated July 16, 2008  
Reply to Office Action Mailed April 16, 2008

attorney at the number indicated below. Early and favorable consideration of the presently amended application is earnestly solicited.

Please charge any deficiency as well as any other fee(s) which may become due under 37 C.F.R. §1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s) to Deposit Account No. 21-0550. Also, in the event any extensions of time for responding are required for the pending application(s), please treat this paper as a petition to extend the time as required and charge Deposit Account No. 21-0550 therefor.

Respectfully submitted,



Christopher Trainor  
Reg. No. 39,517  
Attorney for Applicant(s)

***Carter, DeLuca, Farrell & Schmidt, LLP***  
445 Broad Hollow Road, Suite 225  
Melville, New York 11747  
Tel.: (631) 501-5700  
Fax: (631) 501-3526

**Correspondence Address:**  
Chief Patent Counsel  
Covidien  
60 Middletown Avenue  
North Haven, CT 06473

structure comprising a plurality of elongated leg members..., said leg members each having a length which is a plurality of magnitudes greater than a thickness of said body..., each of said leg members being provided with a central channel therein, each of the channels opening on a proximal side of said frame and extending to a point proximate a closed distal end of said leg member. The solid shell-like cover disclosed by Applicant's is designed to encapsulate loose bodied cells (e.g., blood and marrow cells, pluripotent stem cells, autologous cartilage cells, etc.) so as to facilitate the repair of articular cartilage. (§ 0051) A solid shell-like cover is necessary to retain blood (and marrow) cells seeded in the defect. (§ 0007).

Mulhauser discloses an implantable prosthesis for repairing and reinforcing a ruptured or defective muscle wall including a pliable tissue infiltration fabric. (See column 3, lines 39-41). As conceded by the Examiner, Mulhauser fails to teach legs which are several times longer than the thickness of the body or legs that contain central channels.

In the Office Action, the Examiner states the following:

"Frey '328 teaches legs (1) that contain a central channel (11) opening on the proximal side of the device and closed at the distal end. Further, the legs contain with a distal end portion that extends beyond the periphery of the tapered portion immediately proximal to the tapered section in order to prevent withdrawal (column 2, line 61 to column 3, line 3). It would have been obvious to one skilled in the art at the time the invention was made to modify the device taught by Mulhauser '772 with the legs taught by Frey '328 because they are longer and capable of engaging the tissue better."

Applicants respectfully submit that neither Mulhauser '772 nor Frey disclose an encapsulation device as recited in Claim 1. More specifically, Claim 1 recites, *inter alia*, "each of said leg members being provided with a central channel therein, each of the channels opening on a proximal side of said frame and extending to a point proximate a closed distal end of said

leg member.” Neither Mulhauser nor Frey disclose an encapsulation device including leg members as recited in Claim 1. As conceded by the Examiner, Mulhauser’s implantable prosthesis does not disclose legs including channels. Frey does not disclose channels which extend to a point proximate a closed distal end of the leg member. Applicants note that Frey’s bone nail 1 includes a concavity or conical shaped depression” and does not include a channel as recited in Claim 1. For at least this reason, Claim 1 is patentable over Mulhauser and Frey, taken alone or in combination, and is in condition for allowance.

Kaikkonen discloses a surgical tissue fixation system including plates and fasteners for securing the plates to tissue. (Column 1, lines 5-11). Kaikkonen has been cited for teaching a flexible metal cover member because metal is strong and capable of being deformed. Kaikkonen does not disclose, teach or even suggest an encapsulation device for repairing articular cartilage defects which includes legs such as recited in Claim 1. Thus, Mulhauser, Frey and Kaikkonen, fail to teach or suggest an encapsulation device as recited in Claim 1 and Claim 1 is in condition for allowance..

Since Claims 3, 9, 16 and 17 depend from independent Claim 1, and contain all the limitations of Claim 1, for at least the reasons discussed above with respect to Claim 1, Applicants submit that each of Claims 3, 9, 16 and 17 is also in condition for allowance.

In the Office Action, Claim 20 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Mulhauser in view of Kaikkonen. Claim 20 recites, *inter alia*, “a method for effecting a repair to an articular cartilage defect comprising the steps of: providing an encapsulation device including a body for disposition adjacent a bone in an area of the cartilage defect, and an elongated leg structure comprising a plurality of elongated leg members...each

provided with a central channel therein, the channel being open on a proximal side of the frame member and extending to a point proximate a closed distal end thereof." As discussed above in reference to Claim 1, neither Mulhauser nor Kaikkonen discloses an encapsulation device including legs with a central channel therein which is open on proximal side of the frame member and extends to a point proximate a distal end thereof as recited in Claim 20. Further, neither Mulhauser nor Kaikkonen disclose a method for effecting a repair to an articular cartilage defect. Mulhauser and Kaikkonen are directed toward repairing and reinforcing a ruptured or defective muscle wall and fixating fractured or severed bones, respectively. Thus, Mulhauser and Kaikkonen fail to disclose, teach or even suggest a method for effecting a repair to an articular cartilage defect as recited in Claim 20.

In view of the foregoing amendment and remarks above, Applicants respectfully submit that Claim 20 is in condition for allowance.

### **Conclusion**

In view of the foregoing, this case is believed to be in condition for allowance, such early and favorable action is being earnestly solicited.

Should the Examiner believe that a telephone interview may facilitate resolution of any outstanding issues, the Examiner is respectfully requested to telephone Applicants' undersigned